



DISPUTES

A safe voice or silent risk: An attempt at reforming whistleblower protection through the Protected Disclosures Draft Bill

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by Harold Jacobs, Director, Luyanda Lebepe, Senior Associate and Kian Steytler, Candidate Attorney

The case of Babita Deokaran, a senior official at the Gauteng Health Department who lost her life after exposing tender corruption, exemplifies the shortcomings of the current disclosure framework in providing adequate avenues and procedures through which disclosures can be made without fear of retaliation and other forms of reprisal. In response, the Department of Justice and Constitutional Development has prepared the Protected Disclosures Bill, 2026 ("**the Bill**") in an attempt to address these shortcomings.

The proposed Bill aims to strengthen protection for whistleblowers, provide adequate procedures through which disclosures can be made, afford employees protection from occupational detriment and other forms of reprisal, provide for the investigation of disclosures, establish a complaints mechanism overseen by a retired judge, and provide amendments to witness protection and legal aid arrangements. In certain circumstances, it permits a court-ordered award to a qualifying discloser in defined circumstances.^[1]

Core procedural requirements and timelines

According to the Bill, an authorised person must, within five days, acknowledge receipt of a disclosure and conduct a preliminary assessment and thereafter decide, within 10 days, whether to investigate or refer the matter to another authorised person. Disclosers must be updated at least every three months. An investigation must be completed within 12 months, subject to a single extension of up to six months granted by a retired judge. Suppression or concealment of evidence by an authorised person constitutes an offence.^[2]

Confidentiality, immunity, and anti-retaliation

The Bill criminalises unauthorised disclosure of a discloser's identity, permits courts to hear evidence *in camera* and require redaction of identifying information, and confers civil and criminal immunity where the discloser reasonably believed they were revealing improper conduct. It prohibits occupational detriment for employee disclosers and detrimental action against any discloser or related person, reverses the evidential burden once a protected disclosure and linked detriment are shown, and criminalises retaliation.^[3]

Witness protection, legal assistance & system oversight

The Witness Protection Act applies *mutatis mutandis* to disclosers and related persons, and courts and tribunals may refer indigent disclosers for legal representation at the state's expense through Legal Aid South Africa.^[4]

The Director-General must develop and maintain an electronic central database for disclosures and include anonymised disclosure data in the Department's annual report.^[5]

Incentive Schemes

The Minister of Justice and Constitutional Development, Mmamoloko Kubayi, has stated that the government is cautious about adopting a direct cash rewards system but is open to public proposals. Broader models, including international practices, will be considered during public consultation. As a member of the International Labour Organisation (ILO), it is important for South Africa to consider international labour standards in this respect.

International practices such as *qui tam* lawsuits could be a suitable model to adopt. Under such lawsuits, private individuals institute legal proceedings on behalf of the state when there is alleged impropriety concerning the submission of false claims to the government.^[6] *Qui tam* lawsuits under the False Claims Act ("FCA") in the United States of America allow a party who successfully alleges an impropriety to receive a cash incentive of between 15% and 30% of the proceeds.^[7] In terms of the FCA, when the action is one which the court finds to be based primarily on disclosure of information relating to allegations or transactions in criminal, civil, administrative, or other hearings, the court may award incentives as it considers appropriate, up to 10% of the proceeds.^[8] Any person bringing such an action may additionally receive an amount for any reasonable expenses incurred, including legal fees and costs.^[9] This model is based on the premise that, but for the individual blowing the whistle, the impact and consequential result of the fraud, corruption, or other impropriety would have had more dire consequences had such individual not come forward.

The introduction of awards in the Protected Disclosures Bill relates specifically to convictions of an employer who engaged in prohibited conduct or certain improprieties in the workplace.^[10] In terms of section 18 of the Bill, an individual or individuals may receive up to 25% of the monetary sanctions imposed on the employer if the information disclosed originated from the discloser(s), was not known prior to the disclosure, and proves elements of a criminal or administrative offence which ultimately leads to a conviction.^[11]

Although this is a step forward, the award mechanism is triggered only when an employer is convicted and a monetary sanction is imposed, and eligibility turns on the nature of the discloser and the information rather than on employee status. It excludes individuals who work in the public service, persons in authority in terms of section 34 of PRECCA^[12], those who provide information as part of a plea agreement or who were accomplices in the concerned offence, and persons who are law enforcement agents.^[13] These exclusions substantially curtail incentives for many public-sector insiders, including public servants.

The Need for a Specialised Whistleblowing Office

Although the proposed Bill provides avenues on which people can rely to make disclosures, the need for more secure reporting channels is evident in order to enhance the confidentiality and anonymity of *bona fide* disclosers. The case for a specialised office rests primarily on the advantages of independent system-wide oversight and enforcement. The lack of an independent whistleblowing protective authority or specialist whistleblowing office has been identified by the Active Citizen Movement as a critical gap in the proposed amendments to the disclosure landscape in South Africa.^[14]

Similar to South Africa's shortcomings concerning the lack of immediate protection and reporting channels available to citizens, the United Kingdom has tabled the Protection for Whistleblowing Bill (Bill 27), which is currently before the House of Lords in Parliament. Bill 27 aims to implement two

key changes to the current whistleblowing regulatory framework in the UK: firstly, expanding the protection of whistleblowers beyond workers or persons in an employment relationship; and secondly, providing for a specialised whistleblowers office that deals with complaints and disclosures.^[15]

The proposed "Office of the Whistleblower" would set minimum standards, accredit organisational schemes, provide an independent disclosure and reporting service, issue information and action notices, make redress and interim orders, and impose civil penalties, with appeals to the appropriate tribunal. A comparable institution in South Africa will complement, not replace, the Bill's framework by enhancing independence, consistency, and enforcement across sectors. A specialised whistleblowers office would broaden the involvement of *bona fide* disclosers with improved physical and employment protection.

Conclusion

An enhanced disclosure system should result in more disclosures, credible safeguards and possibly reduce the current high levels of corruption. Whistleblowing is an act of constitutional bravery that should be fostered to ensure openness, transparency, and accountability. Time will tell whether the adoption of the Bill's stronger procedures, protections, oversight, and remedies deliver these aims. The Bill is open for public comment and submissions may be made on its content on or before 14 May 2026.

[1] Section 2 read with Sections 23 and 24 of the Protected Disclosures Bill, 2026.

[2] Section 14(1)-(4), (8)-(11) of the Protected Disclosures Bill, 2026.

[3] Sections 19, 20 and 21(1)-(8) of the Protected Disclosures Bill, 2026.

[4] Sections 22 and 23 of the Protected Disclosures Bill, 2026.

[5] Sections 3(1) and 3(7) of the Protected Disclosures Bill, 2026.

[6] 31 U.S.C. § 3730(b).

[7] 31 U.S.C. § 3730(d).

[8] 31 U.S.C. § 3730(d).

[9] 31 U.S.C. § 3730(d).

[10] Section 18 of the Protected Disclosures Bill, 2026.

[11] Section 18(1) of the Protected Disclosures Bill, 226.

[12] The Prevention and Combating of Corrupt Activities Act 12 of 2004.

[13] Section 18(2) of the Protected Disclosures Bill, 2026.

[14] ACM slams proposed Protected Disclosures Bill 2026 as 'cold comfort' for whistle-blowers

[15] Protection for Whistleblowing Bill (HL Bill 27).



Harold Jacobs

Director

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Luyanda Lebepe

Senior Associate

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